frontier

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May 24, 1996

BY OVERNIGHT MAIL

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket 96-61 -- Forbearance Issues

Dear Mr. Caton:

Enclosed for filing please find an original plus twelve (12) copies, two of which are marked "Extra Public Copy," of the Reply Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: International Transcription Service

Ms. Janice Myles (cover letter plus diskette)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as Amended	)	

REPLY COMMENTS OF
FRONTIER CORPORATION

Frontier Corporation ("Frontier"), on behalf of its interexchange and exchange carrier subsidiaries, submits this reply to the comments received in response to the Commission's Notice initiating this proceeding.[1] The comments overwhelmingly demonstrate that the Commission should abandon its mandatory detariffing proposal, in favor of a permissive detariffing policy. Under this approach, non-dominant interexchange carriers would be permitted, but not required, to file tariffs for interstate, interexchange services. The costs that would accompany adoption of a mandatory detariffing regime far outweigh any possible benefits that such a regime might engender. Moreover, the discrete concerns that the Commission identifies (tacit price coordination and unilateral abrogation of negotiated agreements) may be adequately addressed by less drastic alternatives.

In addition, the Commission should adopt its proposal to eliminate its rule prohibiting the bundling of interexchange services provided by non-dominant interexchange carriers

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[1] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Dkt. 96-61, Notice of Proposed Rulemaking, FCC 96-123 (March 25, 1996).

and customer premises equipment ("CPE"), so long as the piece-parts are individually available.

Detariffing. Virtually all parties oppose the Commission's mandatory detariffing proposal. The parties demonstrate that the availability of a tariffing option carries with it significant, pro-consumer benefits, particularly in the context of mass-market, consumer-oriented transactions. These include: having information on rates, terms and conditions readily available to consumers; lowering transaction costs for mass-market products and services; the ability to introduce new service offerings, price discounts, optional calling plans and the like rapidly; and the promotion of certainty between a carrier that avails itself of the tariffing option and its customers.[2] On the basis of the record compiled in this proceeding, the Commission should jettison its mandatory forbearance proposal.[3]

The suggestions of certain parties[4] that the Commission should continue to require the filing of tariffs on a mandatory basis are equally misplaced. Tariff regulation -- although extremely valuable in defining the terms of the deal between a non-dominant interexchange carrier and its tariff-based customers -- is not necessary to enforce the non-discrimination provisions of the Communications Act Given the intensely competitive

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2 *See, e.g.*, Frontier at 3-5; MFS at 5-8; MCI at 8-19; AT&T at 3-22; Sprint at 2-26; and LDDS at 9-15.

3 Certain parties (*e.g.*, MFS at 3-5; LDDS at 6-9) also demonstrate that, although section 10(a) authorizes the Commission to forbear from tariff regulation, it does not authorize the Commission to prohibit tariff regulation altogether.

4 *E.g.*, CFA at 4-7; PaPUC at 8-10.

nature of this business, the Commission may rely upon the market to discipline unreasonably discriminatory pricing.

The Commission should also reject the claim of TRA[5] that it treat *all* interexchange carriers affiliated with incumbent local exchange carriers as dominant. While the Commission may have legitimate concerns regarding Bell company entry into the interexchange business (particularly, in-state entry), those concerns -- and the statutory construct of the Act -- do not permit similar conclusions with respect to incumbent exchange carriers -- such as Frontier's telephone companies -- that serve less than 2% of the Nation's access lines. The Nation's smaller exchange carriers simply do not have the size, scope or geographic concentration to present the same competitive concerns that may accompany Bell company entry into the interexchange business.[6]

In addition, the specific suggestion favoring continued mandatory tariff regulation -- that tariffs are necessary to provide residential consumers with verifiable information regarding carriers' rates, terms and conditions[7] -- are precisely those concerns that virtually

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5 TRA at 19-22.

6 *See* Frontier Market Definition Comments at 6-8.

The suggestion of certain Bell companies that the interexchange market is characterized by tacit price coordination -- and that, therefore, rapid Bell company entry into this business is essential (*e.g.*, Bell Atlantic at 2-4; Pacific at 9-10) -- are incorrect. The interexchange business today does not exhibit the structural characteristics conducive to price coordination. See MCI at 11-22; AT&T at 23-24. The Commission should not utilize the "tacit price coordination" plea as a basis for short-circuiting the Act's meticulous requirements for permitting the Bell companies into the in-state, interexchange business.

7 *E.g.*, CFA at 4-7

all interexchange carriers have identified as reasons why a permissive detariffing policy makes sense. It is particularly for the consumer market that most non-dominant interexchange carriers will elect to file tariffs. Continuation of a mandatory tariffing policy -- even solely for residential customers -- is overbroad.

The filed-rate doctrine also need not prevent the Commission from adopting a permissive -- as opposed to a mandatory -- detariffing policy. The Commission may craft existing regulatory tools to preclude interexchange carriers from attempting unilaterally to abrogate negotiated, customer-specific contracts. It may utilize its "substantial cause" test to evaluate such tariff filings and may require that such tariffs be filed on lengthened (*e.g.*, forty-five or ninety-day) notice periods.[8] Adopting a mandatory detariffing policy to address this concern is akin to throwing out the baby with the bath water.

In short, the Commission should adopt the permissive detariffing regime that was in effect after the courts rebuffed its first attempt to adopt a mandatory detariffing policy.[9]

Bundling. IDCMA vociferously objects to any change in the current, no-bundling rule. However, so long as the individual piece-parts are separately available, the market structure of both the interexchange business and the CPE business are such that concerns that actuate the antitrust law's prohibition on tying are virtually non-existent.[10] When both

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[8] *See, e.g.*, Frontier at 5 n.6.

[9] *See MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985).

[10] *See generally Jefferson Parish Hospital District 2 v. Hyde*, 466 U.S. 2 (1984).

Although IDCMA argues (IDCMA at 3-8) that the Commission never designed its no-bundling

markets -- or, for that matter, the market for the tying product -- are competitive, tying is an ineffective strategy. It is plainly the case that both the interexchange and CPE markets are highly competitive.

Bundling -- where the discrete components are individually available -- offers a number of pro-competitive benefits. As the Commission notes,[11] customers are increasingly interested in one-stop shopping because they see the benefits in obtaining all of their telecommunications services from one source; a point IDCMA acknowledges.[12] Moreover, nothing prevents independent CPE providers from offering the same conveniences, by reselling or acting as agents (either exclusive or non-exclusive) for interexchange carriers' services. The "separate availability" requirement that Frontier suggests addresses IDCMA's concerns.[13]

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rule to replicate the strictures of the antitrust laws, its analysis is essentially irrelevant. So long as a carrier may not effectively enforce a requirement that a customer must purchase CPE in order to obtain basic transmission services -- as a carrier that lacks market power cannot -- the parade of horribles IDCMA postulates will not occur. Thus, its concerns regarding potential violations of the non-discrimination and unreasonable practices prohibitions contained in the Communications Act and its concerns regarding potential violations of trade agreements (*id.* at 13-16, 28-32) are unfounded.

11 Notice, ¶ 88.

12 IDCMA at 12.

13 The concerns raised by IDCMA may well make sense as applied to an interexchange carrier that is affiliated with an equipment manufacturer, particularly one with substantial positions in one or both markets. Thus, the Commission may wish to consider continuing this prohibition on AT&T until its separation from Lucent is complete. *See* LDDS at 18. The Commission may also wish to consider such a requirement in the context of Bell company entry into the interexchange and manufacturing businesses.

For the foregoing reasons, the Commission should act upon the proposals contained in the Notice as suggested herein and in Frontier's comments.

Respectfully submitted,

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May 24, 1996

Certificate of Service

I hereby certify that, on this 23rd day of May, 1996, copies of the foregoing Reply Comments of Frontier Corporation were served by first-class mail, postage prepaid, upon the parties on the attached service list.

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